



May 23, 2008

Jeffrey C. Williams
Kercher Engineering, Inc,
254 Chapman Road, Ste. 202
Newark, DE 19702

RE: PLUS review – 2008-04-01; Pawnee Village Rezoning

Dear Mr. Williams:

Thank you for meeting with State agency planners on April 30, 2008 to discuss the proposed plans for the Pawnee Village rezoning project to be located between Bay Road and Tub Mill Road, west of Keller Avenue.

According to the information received, you are seeking rezoning of approximately 13.5 acres from AR / Multi to BG / Multi for unspecified commercial and residential use. This PLUS review is for both the rezoning application and the comprehensive plan amendment that will be required should Levy Court choose to rezone this property.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as Kent County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

Executive Summary

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. ***Our office notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.***

State Strategies/Project Location

- This rezoning is located in Investment Level 3 according to the *State Strategies for Policies and Spending*. This site is also currently located in the Kent County Growth Zone. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments will support growth in these areas, but please be advised that the State may have other priorities in the near term future. Our office has no objections to the proposed rezoning of this parcel in accordance with the relevant County codes and ordinances.

Street Design and Transportation

- While they are unable to estimate trip generation of the proposed development from the information provided, DelDOT believes a mixed use development of the size proposed for rezoning would warrant a traffic impact study (TIS) under DelDOT's newly adopted Standards and Regulations for Subdivision Streets and State Highway Access. DelDOT anticipates recommending to Kent County that they require a TIS before acting on this rezoning application.
- DelDOT plans for the grade-separated intersection at Thompsonville Road include extending Keller Avenue through to the service road and restricting the intersection of Keller Avenue and Delaware Route 1 to allow only right turns in and out. However these plans were based on the existing zoning and relatively little development in the area. The proposed commercial zoning could result in traffic volumes on Keller Avenue that are not compatible with the current residential use and in volumes entering and exiting Route 1 there that would require significant improvements to both the Route 1 intersection and the street. In evaluating the subject rezoning, DelDOT recommends that the County look at the area comprehensively and consider the continued appropriateness of residential zoning for the lots along Keller Avenue. If the subject rezoning is appropriate, then a proactive rezoning of other lands in the area may be appropriate as well. For their part, DelDOT will need to consider feasibility of continuing to maintain Route 1 access for Keller Avenue. It may be necessary to require that access occur only by the service road.

Natural and Cultural Resources

- According to the answer to Question #27 on the application form, there is no forest on this site; however, according to the aerial photograph with the application, this site is approximately half forested. DNREC recommends the applicant correct this discrepancy on the application and state the amount of forest that occurs on site. The site plan should be designed in a way that allows for

preservation of as much of the wooded area as feasible. Developments that are designed within wooded areas significantly reduce the habitat value of the forest for wildlife due to clearing, fragmentation, and subsequent landowner activities. As this site is cleared, resident wildlife will have to disperse into surrounding areas which can create human/animal conflicts including interactions on the roadways.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: David Edgell 739-3090

This PLUS review includes both a comprehensive plan amendment and a rezoning request. The rezoning of this property is at the discretion of Kent County Levy Court. Should the Levy Court ultimately choose to grant this rezoning request, the comprehensive plan amendment must be adopted prior to or concurrently with the zoning change. Kent County is in the process of updating their comprehensive plan at this time. It is strongly recommended that if the Levy Court is inclined to approve this request that it be integrated into the comprehensive plan update, and rezoned after plan adoption and certification. This rezoning is located in Investment Level 3 according to the *State Strategies for Policies and Spending*. This site is also currently located in the Kent County Growth Zone. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments will support growth in these areas, but please be advised that the State may have other priorities in the near term future. Our office has no objections to the proposed rezoning of this parcel in accordance with the relevant County codes and ordinances.

State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685

The Delaware Division of Historic & Cultural Affairs is an agency of the State of Delaware that consists of archaeologists, architectural historians, curators, educational specialists, historians, historical interpreters, horticulturists, and historic preservation trade professionals, which fosters and oversees the state-federal historic preservation partnership programs in Delaware. The Division of Historic & Cultural Affairs also advises the State of Delaware legislative or government officials on historic preservation issues, participates in project planning under federal regulations, and fosters historic preservation efforts of the State's historic and cultural resources or sites through historical research, management of historic properties, interpretation, and public education.

Preserving the State of Delaware's historic heritage and highlighting its historic legacy of are the guiding principles of the Division of Historical & Cultural Affairs. Through active historic preservation efforts, which involves increasing awareness about Delaware's historic and cultural resources or sites, such as historic properties, buildings, structures, areas, and archaeological sites, the Division of Historical & Cultural Affairs is committed to enhancing Delaware's quality of life by helping people connect with those aspects of

our past that have made this state what it is today. Delaware's historic and cultural resources are very valuable and important the State's heritage and historic legacy, because they provide a visual connection that reflects the State's historical heritage, legacy, customs, and traditions. However, they are also irreplaceable and increasingly endangered because of their commercial attractiveness and the effects of natural forces and human intervention.

The role of the Division of Historical & Cultural Affairs in reference to the Preliminary Land Use Service process ([Chapter 92 of Title 29](#) of the Delaware Code) is to provide information on the development's impact on Delaware's historic and cultural resources or sites, and be an advocate for their protection. In addition, the information that is provided is base on the archival resources and reference materials at the State Historic Preservation Office, which is a part of the Division of Historical & Cultural Affairs. The State Historic Preservation Office is also the central research and archive repository with information on Delaware's historic and cultural resources or sites, such as historic properties, buildings, structures objects, areas, and archaeological sites that were identified, researched, evaluated, recorded or documented.

Delaware has approximately, about 9,500 these historic and cultural resources or sites, listed in the National Register of Historic Places, which is the official list of the nation's historic and archaeological resources. The National Register of Historic Places is the Nation's official list of cultural resources worthy of preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior.

In accordance with the Preliminary Land Use Service process, and based on the information from the archival resources and reference materials at the State Historic Preservation Office of Delaware, which is a part of the Division of Historical & Cultural Affairs, here are the following observations in reference to this Preliminary Land Use Service Application:

- As the developer is probably aware, this proposed project site is in a Level 3 Investment Area according to the Strategies for State Policies and Spending.
- The developer should be aware that this proposed project site is in an area where there are a few historic and cultural resource sites in the vicinity, but none them seem to be on this propose site.
- According to the **Beers Atlas of 1868** (historic geographic map), it appears that the proposed project site is in the geographic region of Milford Hundred. The **Beers Atlas of 1868** indicated that there was one structure of some type somewhat close to

where the proposed project site is located, and it appears that the structure was associated with a Jenkins.

- Since the following observations and analysis did indicate that there are some historical attributes and aspects in reference to this proposed project site (parcel-property), there is a possibility that there could potentially be of other historic or cultural resources or probably on this project site, which has not discovered yet. These historic or cultural resources could be potential archaeological resources such as a cemetery or burial ground, unmarked human remains, the contents of an historic building or structure of an earlier century.
- Prior to any demolition, ground-disturbing activities, or construction, the Division of Historic & Cultural Affairs strongly recommends that the developer should consider the possibility of hiring an archaeological consultant to examine the project site for any indication or evidence of a cemetery or burial ground, unmarked human remains, or the contents of a historic building, structure, or object. In addition, the Division of Historic & Cultural Affairs also recommends that developer read **Chapters 53 and 54, in Title 7, of the Delaware State Code**, which is in reference to the “Conservation of Archaeological Resources In or On State Lands”, and the **“Delaware Unmarked Human Remains Act of 1987”**.
- Finally, it also important for the developer to remember that proposed development or construction projects, whether they are big or small or whether they are located in rural areas or urban areas, have the capability to impact or affect historic and cultural resources through demolition or ground disturbance activities. The unexpected discovery of archaeological resources such as a cemetery or burial ground, unmarked human remains, the contents of an historic building or structure of an earlier century during demolition, ground-disturbing activities, or construction can result in significant delays.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) DelDOT is unfamiliar with the zoning district “Multi,” listed on the PLUS application. Please explain this designation.
- 2) How large an area is proposed for rezoning? The PLUS application reads 13.5 acres, but the rezoning plan accompanying it appears to show 13.3598 acres of the larger 52.41-acre parcel and all 2.20 acres of the smaller parcel.
- 3) The developer has already met with representatives of the DelDOT Division of Transportation Solutions, regarding the grade-separated intersection they plan to build on Delaware Route 1 at Thompsonville. Their plans include a service road from a planned extension of Thompsonville Road south to Williamsburg Drive in Colony West. As indicated in their application, the developer has indicated their willingness to design and build that service road as part of their development. Presently our project is scheduled to begin late in the spring of 2011 and to be

complete in the fall of 2013. Depending on the developer's schedule, it may be necessary for them to improve Williamsburg Drive to serve temporarily as the sole access to their development.

- 4) While they are unable to estimate trip generation of the proposed development from the information provided, DelDOT believes a mixed use development of the size proposed for rezoning would warrant a traffic impact study (TIS) under DelDOT's newly adopted Standards and Regulations for Subdivision Streets and State Highway Access. DelDOT anticipates recommending to Kent County that they require a TIS before acting on this rezoning application. If the applicant would like to begin work on such a study they should have their engineer contact Mr. Troy Brestel of this office to arrange a scoping meeting. Mr. Brestel may be reached at (302) 760-2167.
- 5) DelDOT plans for the grade-separated intersection at Thompsonville Road include extending Keller Avenue through to the service road and restricting the intersection of Keller Avenue and Delaware Route 1 to allow only right turns in and out. However these plans were based on the existing zoning and relatively little development in the area. The proposed commercial zoning could result in traffic volumes on Keller Avenue that are not compatible with the current residential use and in volumes entering and exiting Route 1 there that would require significant improvements to both the Route 1 intersection and the street. In evaluating the subject rezoning, DelDOT recommends that the County look at the area comprehensively and consider the continued appropriateness of residential zoning for the lots along Keller Avenue. If the subject rezoning is appropriate, then a proactive rezoning of other lands in the area may be appropriate as well. For their part, DelDOT will need to consider feasibility of continuing to maintain Route 1 access for Keller Avenue. It may be necessary to require that access occur only by the service road.
- 6) If the rezoning is approved, the developer's site engineer should contact the project manager for Kent County, Mr. Brad Herb, regarding specific requirements for the site plans that would necessarily follow. Mr. Herb may be reached at (302) 760-2571.

The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071

Water Supply

The information provided indicates that Artesian Water Company will provide well water to the proposed projects through a central water system. DNREC files reflect that Artesian Water Company does not currently hold a Certificate of Public Convenience and Necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by

contacting the Public Service Commission at 302-736-7547. Since an on-site public well will be needed, it must be located at least 150 feet from the outermost boundaries of the project and a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case, there is an Underground Storage Tank associated with Fleet Refinishing located within 1000 feet of the proposed project, toward the east side of the property.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

Drainage

- The Drainage Program requests that the engineer take precautions to ensure future site development does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.
- The Drainage Program encourages the elevation of rear lots to direct water towards the streets and alleyways where storm drains and swales are accessible for maintenance. However, the Drainage Program recognizes the need for catch basins in yards in certain cases. Therefore, catch basins and swales placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, pools, and kennels can hinder drainage patterns as well as future maintenance to the storm drain, catch basin, or swale.

Deed restrictions, along with drainage easements recorded on deeds, should ensure adequate future maintenance access.

- Have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement on their property if the easement is only on the record plan. However, by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement on their property.

Forest Preservation

According to the answer to Question #27 on the application form, there is no forest on this site; however, according to the aerial photograph with the application, this site is approximately half forested. DNREC recommends the applicant correct this discrepancy on the application and state the amount of forest that occurs on site.

Forested blocks, even those that are somewhat isolated, do provide wildlife habitat and travel connections to adjacent forested areas. Cumulative forest loss throughout the State is of utmost concern to the Division of Fish and Wildlife which is responsible for conserving and managing the State's wildlife (see www.fw.delaware.gov and the Delaware Code, Title 7). Because of an overall lack of forest protection, we have to rely on applicants and/or the entity that approves the project (i.e. counties and municipalities) to consider implementing measures that will aide in forest loss reduction.

The site plan should be designed in a way that allows for preservation of as much of the wooded area as feasible. Developments that are designed within wooded areas significantly reduce the habitat value of the forest for wildlife due to clearing, fragmentation, and subsequent landowner activities. As this site is cleared, resident wildlife will have to disperse into surrounding areas which can create human/animal conflicts including interactions on the roadways.

In addition, forests should be preserved because they provide environmental services that benefit humans directly such as water quality protection (erosion control and sediment, nutrient, biological and toxics removal), climate moderation, aesthetic value and recreational opportunities.

Underground Storage Tanks

There is one active and one inactive LUST site(s) located near the proposed project:

Fleet Refinishing, Facility # 1-000547, Project # K9501019

Lynch Heights Mobil, Facility # 1-000182, Project #'s K8511021 and K9608149

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

State Fire Marshal's Office – Contact: Duane Fox 856-5298

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

This Agency has no objection to re-zoning requests. The information provided below shall be considered when plans are being designed.

a. **Fire Protection Water Requirements:**

- Water distribution system capable of delivering minimum flow for a specific duration, at 20-psi residual pressure is required. Fire hydrants will need to be provided where water infrastructure is available.

b. **Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements

c. **Accessibility**

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.

- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

d. **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Townhouse 2-hr separation wall details shall be shown on site plans
- Note indicating if building(s) is/are to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- Provide Road Names, even for County Roads

Preliminary meetings with Fire Protection Specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Scott Blaier 739-4811

The Delaware Department of Agriculture has no objections to the proposed rezoning. The *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 3 areas.

Public Service Commission - Contact: Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Delaware State Housing Authority – Contact Vicki Powers 739-4263

This proposal is for a rezoning of 13.5 acres of a larger site from AR to BG for an unknown commercial and residential use, located between Bay Road and Tub Mill Road, west of Keller Avenue near Thompsonville Road, North of Milford in Kent County. According to the *State Strategies Map*, the proposal is located in an Investment Level 3

area. As a general rule, DSHA would like to see any residential development in areas where residents will have easy access to services, markets, and employment opportunities, such as Investment Level 1 and 2 areas outlined in the *State Strategies Map*. The location of this proposal appears to be consistent with where the State would like to see new residential development. While it is unclear at this time what income level this community will be marketed toward, it would be beneficial if some units were set aside for the low- and moderate-income households.

Department of Education – Contact: John Marinucci 735-4055

This proposed project is in the Milford School District. This is a rezoning request with not associated site plan available to review. The Department of Education has no comments regarding this rezoning request but reserves the right to provide comments on the site plan when submitted.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: Kent County